

Entered -06-04-01 - sb
CL 00L0343 - GWENDOLYN BURNS

01-*R*-1061

CLAIM OF:

**JACKIE PHIFER
through his attorney,
Brad W. Thomas, Esq.
Warshauer, Woodruff & Thomas
75 Fourteenth Street, Suite 2700
Atlanta, Georgia 30309**

For bodily injuries alleged to have been sustained when a vehicle was struck by a Norfolk Southern train while attempting to cross an improperly designed intersection on February 11, 2001 at Hank Aaron Drive & McDonough Boulevard.

THIS ADVERSED REPORT IS
APPROVED

BY:

Rosalind Rubens Newell
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY *Robert, Coy DCA*

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 01L0343

Date: June 27, 2001

Claimant /Victim JACKIE PHIFER
BY: (Atty) (Ins. Co.) Brad W. Thomas, Esq., WARSHAUER, WOODRUFF & THOMAS
Address: 75 Fourteenth Street, NE, Suite 2700, Atlanta, Georgia 30309-3645
Subrogation: Claim for Property damage \$ Bodily Injury \$ unspecified
Date of Notice: 5/1/01 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 2/11/01 Place: Capital Avenue & McDonough Boulevard
Department PUBLIC WORKS Division Traffic and Transportation Services
Employee involved Disciplinary Action:

NATURE OF CLAIM: Claimant alleges that he sustained bodily injuries when he was struck by a Norfolk Southern train while attempting to cross an improperly designed intersection at the above referenced location. However, an investigation determined that the claimant was cited for "failure to stop at a railroad crossing signal". Moreover, the laying out and construction of city streets is a governmental function and the City is protected by sovereign immunity as set forth in O.C.G.A §36-33-1.

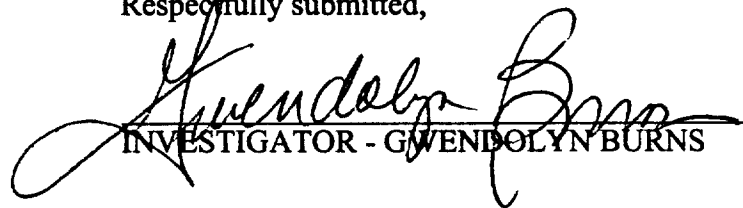
INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report Other X
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver


BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent X City Negligent Joint Claim Abandoned


Respectfully submitted,


INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager:  Concur/date 06-28-01
Committee Action: Council Action



BURNS
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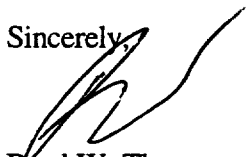
ENTERED - 6-4-01 - SB
01L0343 - GWEN BURNS

RE: Crossing collision on February 11, 2001 at intersection of Capital Avenue and McDonough Boulevard

Dear Sirs and Madams:

This is to give you notice that my client, Jackie Phifer, was seriously injured on February 11, 2001 when he was hit by a Norfolk Southern train at the intersection of Capital Avenue and McDonough Boulevard. The intersection was not properly designed. I have enclosed a copy of the accident report for your convenience. Please direct all inquires to the undersigned.

Sincerely,



Brad W. Thomas

BWT:ldf

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